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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/727,016
Filing Date: December 03, 2003
Appellant(s): DUNN ET AL.

Robert A. Voigt, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/08/2008 appealing from the Office action

mailed 07/25/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2003/0171962   Hirth et al.   9-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   **Claims 19-27** rejected under 35 U.S.C 103(a) as being unpatentable over Hirth

et al. (US Publication No. 2003/0171962 A1).

3.   Regarding claim 19, Hirth discloses a method for filling orders for items using an

order management system, the method comprising the steps of associating one or more

items in an order with one of a set of fulfillment centre objects of an order management

system for representing one or more fulfillment centres and one or more electronic

marketplaces using a release to fulfillment object (Abstract, Paragraphs [0038] – [0041],

[0074]), sending fulfillment instructions relating to one or more items associated with

one of a first subset of fulfillment centre objects to a corresponding fulfillment centre,

wherein the first subset of the fulfillment centre objects being defined for representing

corresponding fulfillment centres (Paragraphs [0041] – [0042]), and sending ordering

information relating to one or more items associated with one of the second subset of

fulfillment centre objects to the corresponding electronic marketplace, wherein the

second subset of the fulfillment centre objects being defined for representing

corresponding electronic marketplaces (Paragraphs [0041] – [0043], [0086], [0136] –

[0137], [0146]).

4.   Although Hirth does not explicitly disclose the second subset of fulfillment centre

objects being defined for representing corresponding electronic marketplaces, the

difference between packages assigned to external partners and the second subset of

the fulfillment centre objects representing an electronic marketplace is only found in the

non-functional descriptive material and is not functionally involved in the steps recited.

Limitations that are not functionally interrelated with the useful acts, structure, or

properties of the claimed invention carry little or no patentable weight. Thus, this

descriptive material will not distinguish the claimed invention from the prior art in terms

of patentability, see In re Ngai, 70 USPQ2d 1862 (CAFC 2004); In re Gulack, 703 F.2d

1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32

USPQ2d 1031 (Fed. Cir. 1994).

5.   Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to define the second subset of fulfillment centre objects for

representing corresponding electronic marketplaces because the electronic marketplace

does not functionally relate to the steps in the method claimed and because the

subjective interpretation of the electronic marketplace does not patentably distinguish

the claimed invention.

6.   Regarding claim 20, Hirth discloses a method in which a release to fulfillment

object associated with a selected one of the fulfillment centre objects in the second

subset comprise data representations for tracking orders in the electronic marketplace

corresponding to the selected fulfillment centre object (Paragraphs [0043], [0049],

[0076], [0145]).

7.   Regarding claim 21, Hirth discloses a method in which each fulfillment centre

objects represents one or more inventory and fulfillment center priority (Paragraph

[0041]).

8.   Regarding claim 22, Hirth discloses a method in which the representing of the

one or more inventory and fulfillment centre priority in the second subset of fulfillment

centre objects represents one ore more of a null inventory and a low fulfillment centre

priority (Paragraph [0041], Paragraph [0083]).

9.   Regarding claim 23, Hirth discloses a method further comprising the step of pre-

selecting items for association with one of the set of fulfillment centre objects based on

one or more inventory and fulfillment centre priority (Paragraph [0041], Paragraph

[0083] – [0085]).

10.   Regarding claim 24, Hirth discloses a method in which the order management

system comprises an administrator interface, and the method further comprises the step

of an administrator using the administrator interface to confirm or over-ride the pre-

selection of items for association with one of the set of fulfillment centre objects (Figure

5, Paragraph [0088]).

11.   Regarding claim 25, Hirth discloses a method further comprising the step of

grouping items and in which the step of sending ordering information further comprises

maintaining the grouping of the items when information corresponding to the grouped

items is sent to the corresponding electronic marketplace (Figure 1, Paragraph [0010],

Paragraphs [0053] – [0055]).

12.   Regarding claim 26, Hirth discloses a method in which the step of grouping items

comprises grouping the items corresponding to the order from which the items were

received by the order management system (Paragraph [0054]).

Regarding claim 27, Hirth discloses a method in which the step of grouping items

comprises grouping the items corresponding to an aggregation of items from a single

order received by the order management system (Abstract, Paragraph [0010]).

(10) Response to Argument

Argument A: Hirth does not teach "associating one or more items in an order

with one of a set of fulfillment centre objects of an order management system for

representing one or more fulfillment centres and one or more electronic marketplaces

using a release to fulfillment object".

In response, the Examiner respectfully disagrees. Hirth teaches logistic objects

associated to a particular activity which implies associating respective objects to

represent entities of the fulfillment coordination engine [0074]. Hirth discloses a

fulfillment coordination engine used to coordinate fulfillment of an order, comprising one

or more items (abstract), by breaking the order into one or more packages that can be

fulfilled within the organization, internal partners, or by using external organizations,

external partners, entirely or in part ([0038] – [0041]). Use of internal partners to fulfill

the order reads on representing one or more fulfillment centres; and the use of external

partners to fulfill the order reads on an electronic marketplace. Internal partners fulfill

the order out of physical locations [0049], such as distribution centers, warehouses, or

factories that reads on a physical fulfillment centre [0086]. Use of external partners

indicates a representation of an electronic marketplace, such a marketplace is further

illustrated in Paragraph [0140]. The fulfillment coordination engine is used to coordinate

the fulfillment of an order which reads on using a release to fulfillment object, implied by

associating respective objects to entities or activities of the fulfillment coordination

engine. Furthermore, it is noted that the features upon which applicant relies (i.e., **an**

electronic marketplace in which suppliers may bid to fill orders placed using a

trading mechanism) are not recited in the rejected claim(s). Although the claims are

interpreted in light of the specification, limitations from the specification are not read into

the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

      Argument B: Hirth does not *teach sending ordering information relating to one*

or more items associated with one of a second subset of fulfillment centre objects to a

corresponding electronic marketplace.

      In response, the Examiner respectfully disagrees. Hirth discloses a fulfillment

coordination engine used to coordinate fulfillment of an order, comprising one or more

items (abstract), by breaking the order into one or more packages that can be fulfilled

within the organization, internal partners, or by using external organizations, external

partners, entirely or in part ([0038] – [0041]). Use of external partners to fill orders is

carried out by sending ordering information, in an electronic marketplace, to

organizations outside of the organization receiving the order, such a market is further

illustrated in paragraph [0140] of Hirth. Furthermore, it is noted that the features upon

which applicant relies (i.e., **an electronic marketplace in which suppliers may bid to**

fill orders placed using a trading mechanism supported by use of shopping carts,

requests for proposals, auctions, reverse auctions, or requests for quotations)

are not recited in the rejected claim(s). Although the claims are interpreted in light of

the specification, limitations from the specification are not read into the claims. See *In*

re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

    Argument C: The limitation "*wherein the second subset of the fulfillment centre*

objects being defined for representing corresponding electronic marketplaces" is not

non-functional descriptive.

    In response, the Examiner respectfully disagrees and points out that the

limitation as phrased was viewed to be non-functional descriptive. The functional

feature of the limitation is defining for sake of representing an electronic marketplace.

The difference between *the work order packages assigned to external partners* in Hirth

and *the second subset of the fulfillment centre objects* of instant application are not

functionally distinct in being defined to represent corresponding electronic

marketplaces. In this case, applicant uses the language second subset of fulfillment

centre object to represent the electronic marketplace which is represented by Hirth in

his disclosure of assigning work order packages to external partners. Furthermore, in

the event that the limitation is not descriptive material, it would have been obvious to

define the work order packages to represent a corresponding electronic marketplace.

Argument D: Hirth does not teach "*a release to fulfillment object associated with*

a selected one of the fulfillment centre objects in the second subset comprise data

representations for tracking orders in the electronic marketplace corresponding to the

selected fulfillment centre object".

In response, the Examiner respectfully disagrees. Hirth teaches the concept of

an object in Paragraph [0074], logistic objects associated to a particular activity imply

associating respective objects to represent entities of the fulfillment coordination engine.

The implementation of the fulfillment coordination engine to achieve data representation

is disclosed in Paragraph [0101] of Hirth. Hirth discloses tracking orders as an entity or

variable of the fulfillment coordination engine in Paragraph [0145].

Argument E: Hirth does not teach "each fulfillment centre objects represents

one or more inventory and fulfillment center priority".

In response, the Examiner respectfully disagrees. Hirth teaches setting a priority

associated with an order that is assigned to a partner to fill an order with its available

inventory (Paragraph [0041]). Thus, Hirth reads on applicants limitation as currently

recited. The concept of fulfillment centre objects and data representations are detailed

in the discussion of the previous arguments.

Argument F: Hirth does not teach "representing of the one or more inventory and fulfillment centre priority <u>in the second subset of fulfillment centre objects represents one ore more of a null inventory and a low fulfillment centre priority</u>".

In response, the Examiner respectfully disagrees. Hirth teaches the concept of an object in Paragraph [0074], logistic objects associated to a particular activity imply associating respective objects to represent entities of the fulfillment coordination engine. The implementation of the fulfillment coordination engine to achieve data representation is disclosed in Paragraph [0101] of Hirth. Hirth teaches rules and parameters for setting a priority associated with an order that is assigned to a partner to fill an order with its available inventory (Paragraph [0041]). Hirth further teaches that the available-to-promise (ATP) service is used to check the availability of an order quantity of a product for supplying the product by a certain date [0083]. The ATP service is able to adjust the parameters of the logistic process including changing partners, (setting priority of partners to fill order [0041]), to fill an order based on the inventory level (availability of order quantity) of the partners, which implies representing one or more of a null inventory and a low fulfillment centre priority.

Argument G: Hirth does not teach "pre-selecting items for association with one of the set of fulfillment centre objects based on one or more inventory and fulfillment centre priority ".

In response, the Examiner respectfully disagrees. Hirth teaches rules and parameters for setting a priority associated with an order that is assigned to a partner to

fill an order with its available inventory (Paragraph [0041]). Hirth teaches that the

product selection or substitution program can substitute products based on predefined

parameters [0085], thus reading on being able to **pre-select items for** <u>**association**</u> with

one of the set of fulfillment centre objects based on one or more inventory and

fulfillment centre priority.

    Argument H: Hirth does not teach "using the administrator interface to confirm

or over-ride the pre-selection of items for association with one of the set of fulfillment

centre objects".

    In response, the Examiner respectfully disagrees. Hirth teaches, in Paragraph

[0088], services providing inbound and outbound interfaces to different order systems

wherein the service exchanges status information with these systems and handles

subsequent changes in the orders reading on being able to over-ride or change entities

within the fulfillment coordination engine, in this case the pre-selection of items detailed

in argument G.

    Argument I: Hirth does not teach "maintaining the grouping of the items when

information corresponding to the grouped items is sent to the corresponding electronic

marketplace".

    In response, the Examiner respectfully disagrees. Hirth discloses a fulfillment

coordination engine used to coordinate fulfillment of an order, comprising one or more

items (abstract), by breaking the order into one or more packages that can be fulfilled

within the organization, internal partners, or by using external organizations, external

partners, entirely or in part ([0038] – [0041]). The work packages assigned to partners

can then be consolidated and redirected to the originator of the order (Figure 1,

Paragraphs [0010], [0043]). Splitting the original work orders and assigning work

packages to partners and then collecting fulfillment of the work orders from partners

reads on <u>maintaining</u> the grouping of items when information corresponding to the

grouped items is sent to the corresponding electronic marketplace.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Faris Almatrahi/

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